OPTIONAL CLAUSES

ASSIGNMENT DELIVERY DATE
Provided that Client has performed Client’s obligations set forth in this Agreement within _________ days of the Date of Agreement, Appraiser and Client estimate that the assignment will be completed [by Date of Delivery or according to the following schedule]. To the extent Client or Client’s contractors or agents are delayed in completing Client’s obligations set forth in this Agreement, the foregoing estimated Date of Delivery or completion schedule shall be adjusted accordingly. The foregoing estimated Date of Delivery or completion schedule shall not constitute Appraiser’s guarantee that the assignment will be completed within such time periods; provided, however, that Appraiser will use commercially reasonable efforts to complete the assignment on or before the Date of Delivery or pursuant to the completion schedule. In the event Appraiser is unable to complete the assignment within the time set forth herein, Appraiser shall provide Client with reasonable notice of any anticipated delays, and Appraiser and Client shall in good faith agree upon an alternative Date of Delivery or completion schedule.

PAYMENT DUE DATE
Appraiser shall invoice Client for services rendered pursuant to this Agreement based upon the fees specified in this Agreement. Appraiser’s invoices are considered due upon receipt by Client and shall be deemed delinquent if not paid within XX days of the date of Appraiser’s invoice. Client shall be assessed a late charge of ___[late charge] per month if Appraiser does not receive payment of an invoice prior to the date the invoice shall be deemed delinquent. Additional late charges shall be assessed each additional month thereafter that an invoice remains unpaid in whole or in part. In the event Appraiser pursues collection efforts to recover unpaid balances owed by Client, Client shall pay Appraiser’s costs of collection, including attorneys’ fees at trial or on appeal.

ADDITIONAL COPIES
Additional requested copies of the appraisal report will be available at a cost of $ [amount] per copy. Client shall specify the delivery method and delivery addresses for such additional copies by written notice to Appraiser.

OWNERSHIP OF WORK PRODUCT
The possession of the Appraisal Report, or any copy or portion thereof, by Client or any third party does not include or confer any rights of publication or redistribution of the Appraisal Report other than to such persons or entities identified in this Agreement who shall be advised in writing of Appraiser’s rights under this Agreement prior to their receipt of the Appraisal Report. All rights, title and interest in (1) any data gathered by Appraiser in the course of preparing the Appraisal Report (excluding any data furnished by or on behalf of Client) and (2) the content of the Appraisal Report prepared pursuant to this Agreement shall be vested in Appraiser. Subject to the foregoing, Client shall have the right to possess a copy of the Appraisal Report and to disclose the report to Client’s attorneys, accountants or other professional advisors in the course of Client’s business affairs relating to the property that is the object of the Appraisal Report, provided that such attorneys, accountants or advisors are advised in writing of Appraiser’s rights under this Agreement prior to receipt of such Appraisal Report.

PROPERTY ACCESS
Client agrees to provide Appraiser with access to the Property on ____ [notice time] notice from Appraiser. For this section only, notice may be given by telephone, fax or e-mail from Appraiser to the Primary Client Contact.
CONFIDENTIALITY
Appraiser will maintain the confidentiality of any Client information that is “Confidential Information” as defined in the Uniform Standards of Professional Appraisal Practice, using the same degree of care Appraiser uses in maintaining his or her own Confidential Information. Notwithstanding the foregoing, information or data will not be considered Client’s “Confidential Information” unless such information or data is (1) first disclosed by Client in tangible form and is conspicuously marked “Confidential,” “Proprietary” or words having similar meaning, or (2) first disclosed in intangible form and orally identified as “Confidential Information” at the time of disclosure and is subsequently summarized in tangible form conspicuously marked “Confidential” within 30 days of the original disclosure. “Confidential Information” shall not include (1) any information that is already in the possession of Appraiser and not subject to any duty of confidentiality; (2) information learned or deduced by Appraiser without any reference to Client’s Confidential Information; (3) information in the public domain; or (4) information required to be disclosed by operation of law or judicial or administrative rule, regulation or subpoena.

PAYMENT IN THE EVENT OF CANCELLATION
Client may cancel this Agreement at any time prior to Appraiser’s delivery of the appraisal report pursuant to this Agreement upon written notice delivered to Appraiser at Appraiser’s address specified herein. Unless otherwise agreed by Appraiser and Client in writing, Client shall pay Appraiser for all work completed prior to Appraiser’s receipt of Client’s cancellation notice, together with all out-of-pocket expenses incurred by Appraiser, at Appraiser’s hourly rates specified in this Agreement, or, if the parties have not specified Appraiser’s hourly rates in this Agreement, at Appraiser’s regular hourly rates in effect at the time the work was performed.

DCF ANALYSIS
[software] shall be used by Appraiser in the completion of any discounted cash flow analysis.

NOTE
The following clauses are contained in the Long Form contract example, and are also options for any shorter contracts.

WHEN APPRAISER’S OBLIGATIONS ARE COMPLETE
Appraiser’s obligations pursuant to this Agreement are completed when the appraisal report in the form provided in this Agreement is delivered to Client pursuant to this Agreement. Appraiser agrees to be responsive to Client’s legitimate inquiries regarding the contents of the report after delivery. Appraiser agrees to be responsive to Client’s legitimate inquiries regarding the contents of the report after delivery.

PAYMENT DUE DATE
Appraiser shall invoice Client for services rendered pursuant to this Agreement based upon the fees specified in this Agreement. Appraiser’s invoices are considered due upon receipt by Client and shall be deemed delinquent if not paid within XX days of the date of Appraiser’s invoice.

MEDIATION & ARBITRATION
In the event of a dispute concerning the subject matter of this Agreement, the parties shall in good faith attempt to resolve such dispute by negotiation between the parties’ principals, or, if such negotiation is unsuccessful, by mediation conducted by a third-party mediator. If such mediation results in an impasse, the parties shall submit their dispute to binding arbitration. Such mediation or, if necessary, binding arbitration shall be conducted pursuant to the mediation procedures or the commercial arbitration rules of the American Arbitration Association. Any arbitration shall be conducted in the city in which Appraiser’s office as specified herein is located. The parties shall share equally the costs of any mediation. In the event of binding arbitration, the arbitrators shall, in addition to any relief appropriate to be awarded to the prevailing party, enter an award in favor of the prevailing party for that party’s costs of the arbitration, including the party’s reasonable attorneys’ fees and arbitration expenses incurred in prosecuting or defending the
Optional Clauses

arbitration proceeding. Subject to the right of the prevailing party to recover its share of the costs of the arbitration services pursuant to the arbitrator’s award, the costs of the arbitration services shall be borne equally by the parties. If the prevailing party seeks judicial confirmation of any arbitration award entered pursuant to this Agreement, the court shall, in addition to any other appropriate relief, enter an award to the prevailing party in such confirmation proceeding for its reasonable attorneys’ fees and litigation expenses incurred in confirming or successfully opposing the confirmation of such an award.

CLIENT’S REPRESENTATIONS AND WARRANTIES
Client represents and warrants to Appraiser that (1) Client has all right, power and authority to enter into this Agreement; (2) Client’s duties and obligations under this Agreement do not conflict with any other duties or obligations assumed by Client under any agreement between Client and any other party; and (3) Client has not engaged Appraiser, nor will Client use Appraiser’s appraisal report, for any purposes that violate any federal, state or local law, regulation or ordinance, or common law.

NOTICES
Any notice or request required or permitted to be given to any party shall be given in writing and shall be delivered to the receiving party by: a) registered or certified mail, postage prepaid; (b) overnight courier, such as Federal Express, United Parcel Service, or equivalent; or (c) hand delivery. The address for delivery of any notice shall be the address for the party as specified in this Agreement, or at such other address as party may designated by written notice to the other party in conformance with this paragraph. Unless otherwise specified herein, notice shall be effective the date it is postmarked or given to a third party for delivery to the receiving party, whether or not the receiving party signs for or accepts delivery of such notice.

SERVICES NOT PROVIDED
The fees set forth in this Agreement apply to the appraisal services rendered by Appraiser as set forth in this Agreement. Unless otherwise specified herein, Appraiser’s services for which the fees in this Agreement apply shall not include meetings with persons other than Client or Client’s agents or professional advisors; Appraiser’s deposition(s) or testimony before judicial, arbitration or administrative tribunals; or any preparation associated with such depositions or testimony. Any additional services performed by Appraiser not set forth in this Agreement will be performed on terms and conditions set forth in an amendment to this Agreement, or in a separate agreement.

SPECIAL OR CONSEQUENTIAL DAMAGES
Neither party shall under any circumstances be liable to the other party for special, exemplary, punitive or consequential damages, including, without limitation, loss of profits or damages proximately caused by loss of use of any property, whether arising from either party’s negligence, breach of the Agreement or otherwise, whether or not a party was advised, or knew, of the possibility of such damages, or such possibility was foreseeable by that party. In no event shall Appraiser be liable to Client for any amounts that exceed the fees and costs paid by Client to Appraiser pursuant to this Agreement.

ASSIGNMENT
Neither party may assign this Agreement to a third party without the express written consent of the other party, which the non-assigning party may withhold in its sole discretion. In the event this Agreement is assigned by mutual consent of the parties, it shall become binding on the assigning party’s permitted assigns.

SEVERABILITY
In the event any provision of this Agreement shall be determined to be void or unenforceable by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

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Optional Clauses

CLIENT’S DUTY TO INDEMNIFY APPRAISER
Client agrees to defend, indemnify and hold harmless Appraiser from any damages, losses or expenses, including attorneys’ fees and litigation expenses at trial or on appeal, arising from allegations asserted against Appraiser by any third party that, if proven to be true, would constitute a breach by Client of any of Client’s obligations, representations or warranties made in this Agreement, or any violation by Client of any federal, state or local law, ordinance or regulation, or common law (a “Claim”). In the event of a Claim, Appraiser shall promptly notify Client of such Claim, and shall cooperate with Client in the defense or settlement of any Claim. Client shall have the right to select legal counsel to defend any Claim, provided that Appraiser shall have the right to engage independent counsel at Appraiser’s expense to monitor the defense or settlement of any Claim. Client shall have the right to settle any Claim, provided that Appraiser shall have the right to approve any settlement that results in any modification of Appraiser’s rights under this agreement, which approval will not be unreasonably withheld, delayed or conditioned.

EXTENT OF AGREEMENT
This Agreement represents the entire and integrated agreement between Client and Appraiser and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both Client and Appraiser. This Agreement includes the following Appendices, which are incorporated into, and made a part of, this Agreement:

- Appendix A: Extraordinary Assumptions and Limiting Hypothetical Conditions
- Appendix B: Information Request
- Other documents as follows